IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1927 of 2006

M/s.Dinosaur Steels Limited,
1/110, Mariamman Koil Street,
Chinnampalayam Post,
Coimbatore. ..Appellant

Vs

The Joint Commissioner of Income Tax,
Special Range II,
Coimbatore. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'D' Bench in I.T.A. No.96/Mds/2000 for the assessment year 1997-98. against the order of the Commissioner of Income Tax (Appeals) Coimbatore dated 12.11.99 in IT Appeal No. 362-C/99-2000 agianst the order of the Joint Commissioner of Income Tax Special Range I, Coimbatore dated 31.8.1999 and made in PA.No.D-3/SR-II/97-98 CBE.

For Appellant : Mr.J.Balachander for
Mr.S.Sridhar

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

The present appeal is filed under Section 260A of the Income Tax Act, 1961 by the assessee, in I.T.A. No. 96/Mds/2000, passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench raising the following substantial questions of law.

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"1. Whether the Tribunal is correct in concluding that the order of rectification passed by the Respondent in restricting the quantum of deduction under section 80 IA of the Act upon taking into consideration the unabsorbed losses is sustainable on facts and in law?
2. Whether the Tribunal is correct in concluding that there was no debate in understanding and interpreting the provisions of section 80 IA of the Act, especially with reference to the computation part of the said section?"

2. The brief facts leading to the above questions of law are as under:

The relevant assessment year is 1997-98 and the corresponding accounting year ended on 31.03.1997. The assessee filed return of income on 28.11.1997 disclosing an income of Rs.3,31,188/-. The gross income declared was Rs.34,92,096.87 and on this, deduction under Section 80IA of the Income Tax Act (hereinafter referred to as the "Act"), at 30% amounting to Rs.10,47,629/- was claimed. On the balance Rs.24,44,467.87, a sum of Rs.21,13,280/- was adjusted being carry forward loss of earlier assessment years. The said return was processed under Section 143(1)(a) of the Act and an intimation was also sent to the assessee on 28.12.1998, determining the income at Rs.3,31,190/-. Subsequently, the Assessing Officer issued a notice under Section 154 of the Act, on 28.06.1999 calling for objections, if any, on the ground that the following mistakes had been crept in.

1.Bonus unpaid of Rs.20,000/- had been omitted to be disallowed.
2.The assessee's claim of deduction under Section 80IA had been allowed before setting of the earlier years losses from the profits and gains of the Industrial Undertaking.

The assessee, by letter dated 12.06.1999, while accepting the disallowance under Section 43B of the Act, had objected to the proposal of restricting its claim under Section 80IA of the Act. Rejecting the contention, the Assessing Officer completed the assessment under Section 154 of the Act and held that the deduction under Section 80IA should be given only after setting off the unabsorbed loss of the earlier years. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The C.I.T. (A) dismissed the appeal by following the Supreme Court Judgment reported in 224 ITR 604 in the case of Commissioner of Income Tax Vs. Kotagiri Industrial Co-Operative Tea Factory Ltd. and confirmed the order of the Assessing Officer. Aggrieved by the order of the first appellate authority, the assessee filed an appeal to the Income Tax Appellate Tribunal

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(hereinafter referred to as the "Tribunal"). The Tribunal dismissed the appeal filed by the assessee by following the Supreme Court judgments reported in 155 ITR 120 and 224 ITR 604, thus confirming the order of the lower authority.

3. The learned counsel appearing for the assessee submitted that the issue involved is not a mistake apparent on the face of the record and it is only a debatable one and hence, the rectification order passed under Section 154 of the Act is without jurisdiction. The learned counsel further stated that any debatable issue should not be subjected to rectification under Section 154 of the Act and relied on the Supreme Court judgment reported in 82 ITR 50 in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers and Others, and the Delhi High Court judgment reported in 266 ITR 208 in the case of C.I.T. Vs. Krishak Bharti Co-operative Ltd., to support his contention. The learned counsel for the assessee also relied on the judgment of the Madhya Pradesh High Court reported in 226 ITR 547 in the case of Commissioner of Income Tax Vs. K.N. Oil Industries, wherein it was held as follows:

> "The benefit under Section 80HH and 80-I of the Income Tax Act, 1961 are in the nature of incentives for these industries in the backward areas. Therefore, a positive approach should be taken in the matter. The assessee is entitled to the full amount of deduction under both the sections without deducting earlier years' losses from the current income."

4. Heard the counsel. The issue is well settled now by Supreme Court judgment in the case of C.I.T. Vs. Kotagiri Industrial Co-operative Tea Factory Ltd. reported in 224 ITR 604, wherein it was held as follows:

> "Having regard to the law as laid down by this Court in Distributors (Baroda) Pvt. Ltd.'s case [1985] 155 ITR 120 and H.H. Sir Rama Varma's case [1994] 205 ITR 433, it must be held that before considering the matter of deduction under section 80P(2), the Income-tax Officer had rightly set off the carried forward losses of the earlier years in accordance with section 72 of the Act and on finding that the said losses exceeded the income, he rightly did not allow any deduction under section 80P(2) and the Appellate Assistant Commissioner as well as the Tribunal and the High Court were in error in taking a contrary view.

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> The principle of statutory construction invoked by Mrs.Ramachandran has no application in construing the expression "gross total income" in sub-section(1) of section 80P. In view of the express provision defining the said expression in section 80B(5) for the purpose of Chapter VI-A, there is no scope for construing the said expression differently in section 80P."

5. The Madhya Pradesh High Court judgment reported in 226 ITR 547, relied on by the learned counsel for the assessee, is no longer good law in view of the Supreme Court judgment reported in 224 ITR 604, in the case of C.I.T. Vs. Kotagiri Industrial Co-operative Tea Factory Ltd. and the later judgment 266 ITR 521 in the case of IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax. The Delhi High Court judgment reported in 266 ITR 208 in the case of C.I.T. Vs. Krishak Bharti Co-operative Ltd., relied on by the counsel for the assessee is also not relevant to the present case, as in that case, the finding was that the issue involved was a debatable one and hence it was not a subject matter for rectification under Section 154 of the Act. In the present case, the issue involved is not a debatable one and is settled by the Supreme Court judgments cited supra. While interpreting the scope of rectification under Section 154 of the Act, the Supreme Court, in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers and Others, reported in 82 ITR 50, held as follows:

> "A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record."

From a reading of the above Supreme Court observation, it is clear that only apparent mistake and non-debatable issue, would be the subject matter of rectification under Section 154 of the Act. As in this case, the order sought to be rectified is not in confirmity with the law declared by the Supreme Court cited supra, which amounts to mistake apparent on the face of the record. Hence, the action of Assessing Officer in rectifying the order under Section 154 of the Act, is perfectly justified.

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6. In view of the foregoing reasons, we are of the view that the order of the Tribunal is in confirmity with law and there is no error or infirmity in the order of the Tribunal and the same requires no interference. Hence, no substantial questions of law arise for consideration of this Court and the tax case is dismissed. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASST REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
III FLOOR RAJAJI BHAVAN
BESANT NAGAR, CHENNAI 600 090.

2. THE JT. COMMR. OF INCOME TAX,
SPECIAL RANGE II, COIMBATORE.

3. THE INCOME TAX APPELLATE TRIBUNAL
CHENNAI D BENCH, CHENNAI

4. THE COMMISSIONER OF INCOME TAX (APPEALS)
COIMBTORE

+ 1 cc to Mr. J. Balachandar, Advocate SR No. 31338

PV(CO)
SR/6.9.2006

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